

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
(DALLAS DIVISION)**

UNITED STATES OF AMERICA, and the
STATE OF TEXAS,

Plaintiffs,

v.

AETNA INC., and
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendants.

Civil Action No.:
3-99CV 1398-H

Filed:

REVISED HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated by and between the undersigned parties, by their respective attorneys, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Revised Hold Separate Stipulation and Order:

A. "Aetna" means defendant Aetna Inc., a Connecticut corporation with its headquarters and principal place of business in Hartford, Connecticut, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and its directors, officers, managers, agents, and employees.

B. "NYLCare-Gulf Coast" means NYLCare Health Plans of the Gulf Coast, Inc., a wholly-owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business

under that name in Houston, Brazoria, Galveston, Austin, San Antonio, and Corpus Christi, Texas.

C. “NYLCare-Southwest” means NYLCare Health Plans of the Southwest, Inc., a wholly-owned subsidiary of Aetna that operates a licensed HMO and HMO-based POS business under that name in Dallas, Fort Worth, and several smaller cities in North Texas, including Paris, Tyler, Longview, and Amarillo.

D. “Prudential” means defendant The Prudential Insurance Company of America, a New Jersey mutual insurance company with its principal place of business in Newark, New Jersey, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and its directors, officers, managers, agents, and employees.

II. OBJECTIVES

A. The Revised Final Judgment filed in this case is meant to ensure Aetna’s prompt divestiture of NYLCare-Gulf Coast and NYLCare-Southwest for the purpose of maintaining viable competitors in the sale of HMO and HMO-based POS plans and the purchase of physician services, and to remedy the effects that the United States and the State of Texas allege would otherwise result from Aetna’s proposed acquisition of Prudential’s health care assets.

B. This Revised Hold Separate Stipulation and Order is intended to ensure, prior to such divestitures, that NYLCare-Gulf Coast and NYLCare-Southwest, which are being divested, be maintained as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestitures.

III. HOLD SEPARATE PROVISIONS

Until the divestitures required by the Revised Final Judgment have been accomplished:

A. Aetna shall immediately begin to take all steps necessary to preserve, maintain, and operate NYLCare-Gulf Coast and NYLCare-Southwest as independent competitors with management, sales, service, underwriting, administration, and operations held entirely separate, distinct, and apart from those of Aetna. Aetna shall not coordinate the pricing, marketing, or sale of health care services from NYLCare-Gulf Coast and NYLCare-Southwest with the pricing, marketing, or sale of health care services by Aetna. Within twenty-five (25) calendar days of the filing of the Complaint in this matter, Aetna will comply and inform plaintiffs of the steps taken to comply with this provision.

B. Aetna is obligated to cause NYLCare-Gulf Coast and NYLCare-Southwest to maintain contracts or agreements for coverage of approximately two hundred sixty thousand (260,000) commercially insured HMO and HMO-based POS plan enrollees in Houston and contracts or agreements for coverage of approximately one hundred sixty seven thousand (167,000) commercially insured HMO and HMO-based POS plan enrollees in Dallas through the date of signing the definitive purchase and sale agreement(s) for the divestitures of the two NYLCare entities. Aetna may include related PPO business as a part of the sale of the NYLCare entities, and the actual number of such PPO enrollees as of the date of signing of the definitive purchase and sale agreement(s) for the divestitures of the NYLCare entities will be taken into account in determining Aetna's compliance with the membership targets described herein.

C. Aetna shall take all steps necessary to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are maintained and operated as independent, ongoing, economically viable,

and active competitors until completion of the divestitures ordered by the Revised Final Judgment, including but not limited to the following:

1. Aetna will appoint experienced senior management to run the combined business of NYLCare-Gulf Coast and NYLCare-Southwest. These executives may be recruited from within the existing Aetna or NYLCare organizations, with plaintiffs' approval, subject to Section IV.C, or from outside the company.
2. Aetna will create a separate and independent sales organization for NYLCare-Gulf Coast and NYLCare-Southwest.
3. Aetna will create a separate and independent provider relations organization for NYLCare-Gulf Coast and NYLCare-Southwest.
4. Aetna will create a separate and independent patient management/quality management organization for NYLCare-Gulf Coast and NYLCare-Southwest.
5. Aetna will create a separate and independent commercial operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.
6. Aetna will create a separate and independent network operations organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.
7. Aetna will create a separate and independent underwriting organization for the combined NYLCare-Gulf Coast and NYLCare-Southwest.
8. Pursuant to transition services agreements approved by plaintiffs, subject to Section IV.C, Aetna will provide certain support services to NYLCare-Gulf Coast and NYLCare-Southwest. These services may include human resources, legal, finance, actuarial, software and computer operations support, and other services

which are now provided to NYLCare-Gulf Coast and NYLCare-Southwest by other Aetna companies. These transition services agreements will contain appropriate confidentiality provisions to ensure that Aetna employees (other than the employees performing services under the agreements) do not receive information that Aetna is prohibited from receiving under Section III.E.

9. Aetna will provide any additional transitional services requested by the management of NYLCare-Gulf Coast and/or NYLCare-Southwest in order to maintain the membership targets described in Section III.B. Such additional services may include, but not be limited to, funding of service quality guarantees, subject to the approval of the plaintiffs in their sole discretion, subject to Section IV.C.
10. Aetna will fund an incentive pool of at least \$500,000, which will be available to management of the NYLCare entities if they meet the membership targets described in Section III.B as of the closing date for the sale of the NYLCare entities.

D. Aetna shall use its best efforts to accomplish the divestitures as expeditiously as possible and will accelerate the timetable for executing the definitive purchase and sale agreement(s) for the divestiture of the NYLCare entities to a target date of October 1, 1999.

E. Aetna shall take all steps necessary to ensure that the management of NYLCare-Gulf Coast and NYLCare-Southwest will not be influenced by Aetna except as necessary to meet Aetna's obligations as described below, and that the books, records, competitively sensitive sales, marketing and pricing information, and decision-making associated with NYLCare-Gulf Coast

and NYLCare-Southwest will be kept separate and apart from the operations of Aetna. Aetna's influence over NYLCare-Gulf Coast and NYLCare-Southwest shall be limited to that necessary to carry out Aetna's obligations under this Revised Hold Separate Stipulation and Order, the Revised Final Judgment, and any applicable regulatory requirements, including all reserve or capital requirements. Aetna may receive aggregate historical financial information (excluding rate or pricing information) relating to NYLCare-Gulf Coast and NYLCare-Southwest to the extent necessary to allow Aetna to prepare financial reports, tax returns, personnel reports, regulatory filings, and other necessary or legally required reports.

F. Aetna shall maintain at either current levels or at the highest levels approved during the year prior to Aetna's acquisition of NYLCare-Gulf Coast and NYLCare-Southwest, whichever are higher, promotional, advertising, sales, technical assistance, marketing, and merchandising support for NYLCare-Gulf Coast and NYLCare-Southwest, but in any event at levels sufficient to ensure that NYLCare-Gulf Coast and NYLCare-Southwest are economically viable, ongoing businesses.

G. Aetna shall provide and maintain all required reserves and sufficient working capital to maintain NYLCare-Gulf Coast and NYLCare-Southwest as economically viable, ongoing businesses.

H. Aetna shall provide and maintain sufficient lines and sources of credit to maintain NYLCare-Gulf Coast and NYLCare-Southwest as economically viable, ongoing businesses.

I. Aetna shall not take any action to consummate the proposed acquisition of Prudential's health care business pursuant to the Asset Transfer and Acquisition Agreement, dated as of December 9, 1998, or any subsequent agreement between Aetna and Prudential, until such

time as the plaintiffs in their sole discretion, subject to Section IV.C, have determined that NYLCare-Gulf Coast and NYLCare-Southwest are independent, viable competitors and that Aetna has complied with this Revised Hold Separate Stipulation and Order, or until the divestitures required by the Revised Final Judgment are complete.

J. Aetna shall not, except in the ordinary course of business, or as otherwise permitted under this Revised Hold Separate Stipulation and Order, or as part of a divestitures approved by the plaintiffs in their sole discretion, subject to Section IV.C, remove, sell, lease, assign, transfer, pledge as collateral for loans, or otherwise dispose of, any asset, tangible or intangible, of NYLCare-Gulf Coast and NYLCare-Southwest.

K. Aetna shall maintain, in accordance with sound accounting principles, separate, true, accurate, and complete financial ledgers, books, and records that report, on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit, and loss of NYLCare-Gulf Coast and NYLCare-Southwest.

L. Until such time as NYLCare-Gulf Coast and NYLCare-Southwest are divested, except in the ordinary course of business or as is otherwise consistent with this Revised Hold Separate Stipulation and Order, Aetna shall not hire, transfer, terminate, or alter, to the detriment of any employee, any current employment or salary agreement for any employee who on the date of the signing of this Revised Hold Separate Stipulation and Order is employed at NYLCare-Gulf Coast or NYLCare-Southwest.

M. Aetna may retain an independent consultant (the “Consultant”) to monitor the operations of NYLCare-Gulf Coast and NYLCare-Southwest until the divestitures required by the Revised Final Judgment have been accomplished. The Consultant shall have no role in the

management of NYLCare-Gulf Coast and NYLCare-Southwest, but shall be given reasonable access to files, data, reports, and other information regarding the operations of NYLCare-Gulf Coast and NYLCare-Southwest. The Consultant's sole responsibility will be to report at least monthly to Aetna's Director of Internal Audit, stating the Consultant's opinion on the question whether NYLCare-Gulf Coast and NYLCare-Southwest are being managed in accordance with applicable law, consistent with prudent underwriting and other industry standards, and consistent with the fiduciary duties of its management. If the Consultant's opinion on this question is anything other than an unqualified "yes," the Consultant shall submit a written report stating the basis for its opinion to the Director of Internal Audit, with a copy to the plaintiffs. The Consultant shall not transmit to Aetna any information that Aetna is prohibited from receiving under Section III.E of this Revised Hold Separate Stipulation and Order. After receiving the Consultant's written report, and with the consent of the plaintiffs in their sole discretion, subject to Section IV.C, Aetna may take appropriate corrective action.

N. Aetna shall request that the NYLCare entities provide the plaintiffs with bi-weekly reports on total membership of the entities until the divestitures required by the Revised Final Judgment are complete.

IV. OTHER PROVISIONS

A. Aetna shall take no action that would interfere with the ability of any trustee appointed pursuant to the Revised Final Judgment to complete the divestitures pursuant to the Revised Final Judgment to a suitable purchaser.

B. Prudential shall take no action that would hinder or obstruct Aetna's ability or

efforts to comply with this Revised Hold Separate Stipulation and Order.

C. In the event plaintiffs are unable to agree on a course of action regarding any item within their discretion in seven days, then the United States may, in its sole discretion, act alone (or decline to act) with respect to that course of action.

D. With the consent of the plaintiffs, in their sole discretion, subject to Section IV.C, Aetna may exclude certain NYLCare-Gulf Coast and NYLCare-Southwest assets from this Revised Hold Separate Stipulation and Order.

E. This Revised Hold Separate Stipulation and Order shall remain in effect until the divestitures required by the Revised Final Judgment are complete, or until further Order of this Court.

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

_____/S/
PAUL J. O'DONNELL
Massachusetts Bar #547125
U.S. Department of Justice
Antitrust Division
Health Care Task Force
325 Seventh Street, N.W., Suite 400
Washington, D.C. 20530
Tel: (202) 616-5933
Facsimile: (202) 514-1517

FOR PLAINTIFF
STATE OF TEXAS

_____/S/
MARK TOBEY
Assistant Attorney General
Chief, Antitrust Section
State Bar No. 20082960
Office of the Attorney General
P. O. Box 12548
Austin, Texas 78711-2548
Tel: (512) 463-2185
Facsimile (512) 320-0975

IT IS SO ORDERED.

Dated _____, 1999.

FOR DEFENDANT
AETNA INC.

_____/S/
ROBERT E. BLOCH
D.C. Bar #175927
Mayer, Brown & Platt
1909 K Street, N.W.
Washington, D.C. 20006
Tel: (202) 263-3203
Facsimile: (202) 263-3300

FOR DEFENDANT
THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA

_____/S/
MICHAEL L. WEINER
Skadden, Arps, Slate, Meagher & Flom, LLP
New York Bar #MW0294
919 Third Avenue
New York, NY 10022
Tel: (212) 735-2632
Facsimile: (212) 451-7446

United States District Judge